IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9063 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAKESHBHAI BHAGVANDAS CHAUDHARI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 9063 of 2002

MR MP SHAH for Petitioner No. 1

MS. KRUTI M SHAH for Petitioner No. 1

MR AY KOGJE, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 23/10/2002

ORAL JUDGEMENT

Rule. Mr AY Kogje, learned AGP waives service of Rule for the respondents.

2. The petitioner was selected for the post of unarmed police constable in the year 1999. When the petitioner was sent for medical examination at the New Civil Hospital, Surat, the petitioner was found to be HIV positive. Hence, the Deputy Police Commissioner (Admn.), Surat City passed the impugned order dated September, 1999 (Annexure "B") deleting the petitioner's name from the select list.

3. It appears that another candidates who was also selected at the same selection for the post of unarmed police constable being Chhotubhai Shambhai Salve was also found to be HIV positive and he challenged the similar order before this Court by filing Special Civil Application No. 11766 of 2000. After hearing the learned counsel for the parties, this Court allowed the said petition by following the decision of the Apex Court in Dr Tokugha Yepthomi vs. Apollo Hospital, 1999 (1) GLH 1008, laying down that the patients suffering from AIDS deserve full sympathy and that the government jobs or service cannot be denied to them. This Court accordingly directed the respondents to restore the name of the said candidate (the petitioner in Special Civil Application No. 11766 of 2000) in the select list and the respondents were directed to ask the petitioner therein to appear for fresh medical examination. This Court further directed that in case that petitioner is otherwise found medically fit, he shall not be denied opportunity of appointment simply on the ground that he is suffering from HIV positive.

4. In response to the notice issued by this Court in the present petition, Mr AY Kogje, learned AGP appears for the respondents and states that the Additional Director General of Police (Admn.) has acquiesced in the aforesaid judgment and has issued a circular in March, 2001 directing the concerned officers not to deny appointment to selected candidate on the ground of being found HIV positive and also not to insist for the HIV examination while making recruitment to the posts of police constables and police sub-inspectors.

5. In view of the above, since the petitioner herein is similarly situate as the petitioner in Special Civil Application No. 11766 of 2000 and there is no other ground pointed out not to follow the said decision, this petition is allowed in the same terms. The respondents are directed to restore the present petitioner's name in the select list of unarmed police constables selected in the year 1999. The respondents are also directed to ask the petitioner to appear for fresh medical examination

and in case he is otherwise found medically fit, the petitioner shall not be denied opportunity of appointment simply on the ground that he is suffering from HIV positive.

This direction shall be complied with within two months from the date of receipt of the writ of this Court or a certified copy of this order, whichever is earlier.

7. Rule is made absolute to the aforesaid extent with no order as to costs.

Direct Service is permitted.

(M.S. Shah, J.)

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